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No. 08-1350

Supreme Court, U.S.
FILED
AUG 3 - 2009
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

DORA B. SCHRIRO, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS,

Petitioner,

VS.

JAMES LYNN STYERS,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

REPLY BRIEF

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Capital Case

QUESTIONS PRESENTED

In December 1989, James Lynn Styers took 4-year-old Christopher Milke into the desert and shot him three times in the back of the head. On direct appeal, the Arizona Supreme Court found one aggravating circumstance invalid and re-weighed the remaining aggravating circumstances and proffered mitigation, including alleged post-traumatic stress disorder. In its independent review of Styers' death sentence, the Arizona Supreme Court explicitly stated that it had considered all of the proffered mitigating evidence, but found Styers' proffered mitigation not sufficiently substantial to warrant leniency and affirmed his death sentence. *State v. Styers*, 177 Ariz. 104, 117, 865 P.2d 765, 778 (1993).

A panel of the Ninth Circuit concluded that the Arizona Supreme Court failed to properly re-weigh the mitigation evidence pursuant to *Clemons v. Mississippi*, 494 U.S. 738, 748–49 (1990), because it failed to consider Styers' post-traumatic stress disorder mitigation. *Styers v. Schriro*, 547 F.3d 1026, 1035–37 (9th Cir. 2008) (Pet. App. A, at 19–20.)

1. Under the Anti-terrorism and Effective Death Penalty Act (AEDPA), when a State's highest court explicitly states it has considered proffered mitigation evidence, must a

habeas reviewing court accept that statement, absent clear and convincing evidence to the contrary?

2. This Court has clearly established that a State cannot preclude a capital sentencer from considering or giving effect to relevant mitigation evidence. *Smith v. Texas*, 543 U.S. 37, 45 (2004); *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982). Here, in considering the proffered mitigation evidence of post-traumatic stress disorder, the Arizona Supreme Court elected to give Styers' evidence no significant mitigating weight because he could not connect his alleged condition to his murderous act. Did the Ninth Circuit violate this Court's jurisprudence by holding that *Smith* forbids a sentencer from relying on the absence of a causal nexus between an alleged mental condition and the crime committed in deciding how much weight to give the proffered mitigation evidence?

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INTRODUCTION

Styers' characterization of this case as having "no issues of importance" (Brief in Opposition, at 12) is simply wrong. Instead, this case provides an extraordinary example of a federal court's failure to properly accord deference under the AEDPA to state court factual findings and state court interpretations of federal law as determined by this Court. This case also presents a question of nationwide significance regarding the extent to which federal courts can dictate to States a particular method of analyzing the significance of mitigation evidence in capital sentencing proceedings.

The Ninth Circuit's ruling eviscerates the deference standard set forth in 28 U.S.C. § 2254. There was nothing unreasonable about the state courts' finding, after considering all of Styers' proffered mitigation evidence, that the mitigation was not sufficiently substantial to warrant leniency. Nor was there anything unreasonable about the state court's use of a causal nexus test in assessing the weight to be given Styers' mitigation evidence. Accordingly, the Ninth Circuit's ruling should be reversed.

I

THE NINTH CIRCUIT FAILED TO GIVE PROPER AEDPA DEFERENCE TO THE ARIZONA SUPREME COURT'S FINDING THAT IT HAD CONSIDERED ALL PROFFERED MITIGATION IN ITS INDEPENDENT REWEIGHING OF AGGRAVATING AND MITIGATING CIRCUMSTANCES.

Styers argues that the Ninth Circuit need not give any deference to the Arizona Supreme Court's determination that his proffered mitigation was not sufficiently substantial to warrant leniency. He ignores this Court's precedent mandating that reviewing courts presume that lower courts know and follow the law and instead contends that the Arizona court's findings in reweighing the aggravation against the mitigation is not the type of factual determination entitled to deference under the AEDPA as set forth in § 2254(e)(1). Styers' argument should be summarily rejected because, contrary to this Court's jurisprudence, the Ninth Circuit failed to give any deference to the Arizona court's findings or legal analysis.

The Arizona Supreme Court's finding that it had considered all proffered mitigation evidence and that the proffered evidence was not sufficiently substantial to call for leniency, are

the type of findings that are entitled to deference under 28 U.S.C. § 2254(e)(1).

The Arizona Supreme Court conducted a reweighing pursuant to *Clemons v. Mississippi*, 494 U.S. 738 (1990), and its statutory duty to independently review Styers' death sentence. A.R.S. § 13–703. Pursuant to state statute, the Arizona Supreme Court was required to "reweigh" based on its independent review of the aggravation and mitigation evidence presented. *See* A.R.S. § 13–703.01(A); *State v. Lee*, 189 Ariz. 608, 617–18, 944 P.2d 1222, 1231–32 (1997) (noting that in death sentence appeals, after independent review of aggravation and mitigation, the court "weigh[s] the aggravating and mitigating circumstances.") The statute explicitly provides that, to the extent the court "determines that an error was made regarding a finding of aggravation or mitigation, the supreme court shall independently determine if the mitigation the supreme court finds is sufficiently substantial to warrant leniency in light of the existing aggravation." A.R.S. § 13–703.01(B). Thus, in its reweighing capacity, the Arizona court necessarily made those findings regarding those "basic, primary, or historical facts: facts 'in the sense of a recital of external events and the credibility of their narrators . . . .'" that are entitled to a presumption of correctness under § 2254(e)(1). *Thompson v. Keohane*, 516 U.S. 99, 110 (1995) (quoting *Townsend v. Sain*, 372 U.S. 293, 309 n.6 (1963)

(quoting in turn *Brown v. Allen*, 344 U.S. 443, 506 (1953))).

The Arizona Supreme Court was obligated to reweigh and make a determination as to whether all of Styers' proffered mitigation evidence was sufficiently substantial to warrant leniency. The state court did so, and its findings are entitled to deference. The Ninth Circuit clearly misconstrued the state court's explicit statement that it had considered all of Styers' proffered mitigation evidence.

In *Schriro v. Landrigan*, 550 U.S. 465 (2007), this Court found that an en banc panel of the Ninth Circuit erred by failing to accept a state court's factual finding that the defendant waived presentation of mitigation. This Court found that the state court reasonably determined that Landrigan's plain statements explicitly informing his counsel not to present mitigation evidence demonstrated that Landrigan had waived presentation of mitigation. *Id.* at 476. Here, the Ninth Circuit's error is even more apparent. Unlike *Landrigan*, where the state court factual determination measured what was in the Defendant's mind at the sentencing hearing, in this case, the state court factual determination measured what was in the minds of the state court judges making the decision.

Under 28 U.S.C. § 2254, federal courts on collateral review must defer to factual findings

of the state courts unless those findings are objectively unreasonable. The Ninth Circuit erred by misconstruing the plain statements of the Arizona Supreme Court that it considered all of Styers' proffered mitigation evidence.

Even without the deference required under the AEDPA, the Ninth Circuit clearly erred in rejecting the state court's factual findings. The Ninth Circuit failed to presume that the Arizona Supreme Court had considered all of Styers' mitigation evidence when it explicitly stated that it had done so. *Parker v. Dugger*, 498 U.S. 308, 314 (1991) ("We must assume that the trial judge considered all this evidence before passing sentence. For one thing, he said he did.") In its opinion affirming Styers' death sentence, the Arizona Supreme Court twice stated it had considered all of Styers' proffered mitigation:

> Because the trial court did not list each of the proffered items of claimed mitigation and state that it found them unavailing does not mean that the trial court did not consider them. It is apparent that the trial court considered this evidence, but ultimately found that it was not sufficiently substantial to call for leniency. *We will also consider it in our independent review.*
>
> . . .

> We have *considered* all of the proffered mitigation and, like the trial court, find it is not sufficiently substantial to warrant leniency.

177 Ariz. at 117, 865 P.2d at 778. (Emphasis added.)

The Ninth Circuit failed to give any deference to the fact that the Arizona court considered Styers' mitigation evidence as required by *Parker*. The Ninth Circuit's ruling directly conflicts with *Parker* and should be reversed.

II

THE NINTH CIRCUIT'S ANALYSIS MISAPPLIES *SMITH v. TEXAS*, AND DIRECTLY CONFLICTS WITH RULINGS OF THE ARIZONA SUPREME COURT WITH REGARD TO ARIZONA'S CAPITAL SENTENCING JURISPRUDENCE.

The Arizona Supreme Court's finding that Styers' proffered Post-Traumatic Stress Disorder mitigation evidence was not relevant because of a lack of causal nexus does not mean that the state court failed to *consider* proffered mitigation and is not contrary to this Court's

holdings in *Lockett v. Ohio*, 438 U.S. 586 (1978), *Eddings v. Oklahoma*, 455 U.S. 104 (1982), and *Smith v. Texas*, 543 U.S. 37 (2004). Styers misapplies the holdings in these cases in arguing that the Arizona Supreme Court requires capital defendants to prove a causal nexus before mitigation evidence is considered. He argues that, prior to *Smith*, Arizona required an unconstitutional "nexus-to-the-crime" screening test. This is an incorrect interpretation of Arizona's capital sentencing jurisprudence—post-*Lockett*, Arizona has never screened relevant mitigation evidence by requiring a nexus between the evidence and the crime—the causal nexus test is simply a method to analyze the relevance of mitigating circumstances.

In *Lockett*, this Court found an Ohio statute which limited the range of mitigating circumstances which may be considered by the sentencer in a capital case violated the Eighth Amendment. 438 U.S. at 608. Specifically, this Court held that "[T]o meet constitutional requirements, a death penalty statute must not preclude consideration of relevant mitigation factors." *Id.*

Seventeen days after this Court's decision in *Lockett*, the Arizona Supreme Court, following *Lockett*, found Arizona's capital sentencing statute unconstitutional because it limited the consideration of relevant mitigation evidence. *State v. Watson*, 586 P.2d 1253, 1257 (1978).

The court found that a portion of Arizona's statute, then A.R.S. § 13–454(F), unconstitutionally limited the consideration of mitigating circumstances to only those contained in the statute. *Id.* at 1256–57.

After *Watson*, Arizona courts have never limited the presentation or consideration of relevant mitigating circumstances in capital sentencing proceedings. *See* A.R.S. § 13–703; *State v. Gretzler*, 659 P.2d 1, 13 (1983) (finding Arizona's capital sentencing statute similar to statutes upheld in *Gregg v. Georgia* and *Proffitt v. Florida*, and requiring courts to consider all relevant mitigating circumstances). (Citations omitted.) Moreover, as the state court recognized, Arizona law has never barred a capital defendant from presenting any evidence of mitigation. *Watson*, 586 P.2d at 1257.

Similarly, contrary to Styers' contention, the Arizona Supreme Court has always followed this Court's holding in *Eddings* requiring the consideration of all proffered mitigation evidence in capital sentencing proceedings. *See State v. Valencia*, 645 P.2d 239, 241 (1982) (citing *Eddings* in requiring consideration of age as a relevant mitigating factor); *State v. McMurtrey*, 664 P.2d 637, 645–46 (1983) (holding that the sentencer may not refuse to consider, as a matter of law, relevant evidence presented in mitigation).

Styers' argument that the Arizona Supreme

Court placed an unconstitutional causal nexus screening test in refusing to consider mitigating evidence in *State v. Hoskins*, 14 P.3d 997 (2000), is misplaced. In *Hoskins*, the state court found that proffered evidence of mental impairment or family dysfunction would not be relevant unless there was a connection between the mitigating circumstances and the crime. *Id.* at 1021–22. The court never refused to consider the mitigating circumstances in violation of *Eddings*. The court in *Hoskins* simply found that the mitigation evidence was not relevant—it did not fail to consider the evidence.

This Court has never held that a sentencer is required to find particular mitigation evidence relevant. *See Harris v. Alabama*, 513 U.S. 504, 512 (1995) ("Equally settled is the corollary that the Constitution does not require a State to ascribe any specific weight to particular factors, either in aggravation or mitigation, to be considered by the sentencer.") (citing *Blystone v. Pennsylvania*, 494 U.S. 299, 306–07 (1990); *Eddings*, 455 U.S. at 113–15.) Moreover, this Court has rejected the notion that the Constitution requires States to adhere to a particular method of balancing mitigating and aggravating factors in capital sentencing proceedings. *Harris*, 513 U.S. at 512 (citing *Franklin v. Lynaugh*, 487 U.S. 164, 179 (1988)). The Arizona court's use of a causal nexus in analyzing the weight to be given mitigating circumstances is not unconstitutional. The use of a causal nexus analysis does not bar the

consideration of mitigating circumstances—it is simply a logical method of analyzing the relevance or weight to be given particular mitigating circumstances.

In misapplying *Smith* to this case, the Ninth Circuit wrongly set forth a rule that would require Arizona courts to give specific mitigating weight to irrelevant mitigation evidence proffered by a capital defendant. This is in direct conflict with this Court's holding in *Franklin v. Lynaugh*, finding that the Constitution does not require the States to follow a particular method for balancing aggravation and mitigation. *Smith* provides that the sentencer in a capital sentencing proceeding cannot be barred from considering proffered mitigating circumstances. This Court has never held, however, that the sentencer is obligated to find all proffered mitigation relevant. *See Harris*, 513 U.S. at 512.

The Ninth Circuit's misapplication of *Smith*, left unchanged, will affect every Arizona capital case in which the sentencer considers, but gives diminished weight to, proffered mitigation that has no causal connection to the crime. Review by this Court is imperative to resolve the conflict between the Ninth Circuit and the Arizona Supreme Court regarding Arizona's procedure for analyzing mitigating circumstances in capital sentencing proceedings.

CONCLUSION

For these reasons, Petitioner respectfully requests that this Court grant the petition for writ of certiorari.

Respectfully submitted

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